

**Minutes**  
**State Election Commission Meeting**  
**April 9, 2012**

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The State Election Commission meeting was called to order by Chairman Judy Blackburn at NOON, Central Standard Time April 9, 2012. The following members and staff were present: Chairman Blackburn; Commissioners DuBois, Wheeler and Younce, Coordinator of Elections Mark Goins; Beth Henry – Robertson, Assistant Coordinator of Elections and Kathy Summers, Elections Specialist.

Motion was made, seconded and unanimously approved to adopt the minutes from March 12, 2012.

Pursuant to T.C.A. § § 2-12-101 and 2-12-106, motion was made, seconded and unanimously approved to accept the nominations for county election commission appointment as submitted by commission members and to leave the nomination process open until 4:30 p.m., Central Standard Time, April 9, 2012. (See attached list of appointments made.)

**Old Business**

- Chairman Blackburn read a letter from Commissioner Greg Duckett (letter attached to minutes) regarding the Unisyn voting machines as seen in Christian County, Missouri on February 7, 2012 and demonstrated before the State Election Commission on March 12, 2012. Commissioner DuBois gave a brief overview of his review of the voting machines.

After brief discussion which included but was not limited to making sure counties have a systematic system for voters to vote on disability model and using a seal over the flash drive compartment, a motion was made, seconded and unanimously approved the certification of the Unisyn machine “Unisyn OpenElect 1.0.1 (Modifications)” with EAC certification number UNS10121966-OE-WI.

- Mark Beckstrand gave a brief update regarding the voting machine Dominion is seeking certification on with the EAC. Dominion anticipates final approval late spring or early summer.

**New Business**

- At the request of Chairman Blackburn, Unisyn officials showed their electronic poll book. Coordinator Goins informed Unisyn to contact

Steve Griffy in the Elections Division for the procedures in obtaining certification of the poll book for use in TN.

- The Division of Election will hold the annual seminar June 3-6, 2012, in Nashville at the Airport Marriot.
- Cannon County – Commissioner Kent Younce received a complaint from Stan Dobson, Administrator of Elections for Cannon County and Senator Mae Beavers regarding Cannon County Election Commissioner Louise Mayo. Both Senator Beavers and Mr. Dobson believe the working conditions have become a hostile environment and they would like Commissioner Mayo to be replaced. Cannon County Election Commissioner Matthew Studd sent a letter supporting the concerns of Mr. Dobson and Senator Beavers. Commissioner Younce asked fellow State Election Commission members for suggestions on how to handle this complaint.

After brief discussion a motion was made, seconded and unanimously approved to send a letter from the State Election Commission to the Administrator of Elections for Cannon County Election Commission, with a carbon copy sent to Senator Beavers, advising the Administrator if he believes the work environment is a hostile environment he should make a complaint with his local human resources office.

- Washington County - Commissioner Wheeler spoke briefly regarding the termination of the Administrator of Elections and the letter sent to State Election Commission members from the Washington County Democratic Party Executive Committee. The Washington County Democratic Party has no confidence in the performance of Commissioner Thomas Graham and the discovery of information which might appear Commissioners' Ruetz, Wills and Graham engaged in one or more violations of the Sunshine Law. No lawsuit has been filed at this time. Commissioner Wheeler is concerned of the appearance of secret meetings which violate the Sunshine Law.

### **Coordinator Update**

- Davidson County – Coordinator Goins reminded commission members during the August 2010 election Hawkins and Rutherford County Election Commission failed to be open for early voting on a Saturday. Both counties were brought before the State Election Commission and a show cause hearing was set for Hawkins County; Rutherford County Election Commission and an attorney representing the Rutherford County Administrator of Elections requested a delay on a show cause hearing as they were in negotiations with the AOE who ended up retiring. During the March 6, 2012, Presidential Preference Primary (PPP) Davidson County Election Commission failed to be open on February 18, 2012, for early voting. Coordinator

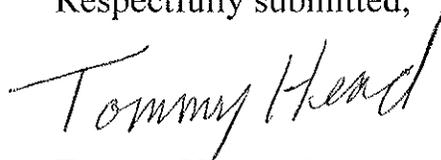
Goins would like to add the Davidson County Election Commission and Administrator of Elections to the May agenda to discuss a show cause hearing.

- Coordinator Goins provided updated information on lawsuits. Copies of all pending suits were in each commissioner's meeting packet.
- The TN Republican Party has stated Mr. Williams is not a bona fide member of the Republican Party. Therefore, he is not a qualified candidate to run for Tennessee Senate, District 8.
- In Knox County there is a candidate for Tennessee House of Representative who is registered to vote in Knox County but based on Knox County GIS maps which show the location of her house she lives in Anderson County. The candidate's property is on the county line and the candidate maintains her residence is in Knox County and not Anderson County. The coordinator's office is researching the issue along with Knox and Anderson counties.

The next meeting is scheduled for May 14, 2012. The meeting will be held in the William R. Snodgrass – Tennessee Tower, 7<sup>th</sup> Floor, Conference Room at NOON Central Daylight Time.

Motion was made to adjourn, and there being no further business to come before the commission at this time, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tommy Head". The signature is written in black ink and is positioned above the printed name.

Tommy Head – Secretary  
State Election Commission

# Vacant Status

09-Apr-12

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## Polk

D Tom Wheeler

R Judy Blackburn

R

## Wayne

D Greg Duckett

R Jimmy Wallace

R

**Total Vacancies: 2**

# Holdover Status

09-Apr-12

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		Appointment	Reappointment
<b>Gibson</b>			
D	Greg Duckett		
R	Jimmy Wallace		
	D Kathleen Smith	6/22/2007	5/27/2009
	D Robert S. Phelan	4/3/1995	5/27/2009
<b>Haywood</b>			
D	Greg Duckett		
R	Jimmy Wallace		
	D Aubrey Lee Bond	4/3/1995	4/6/2009
	D Ida Ruth Bradford	4/3/1995	4/6/2009
<b>Henderson</b>			
D	Greg Duckett		
R	Jimmy Wallace		
	D Cornelia T. Morris	4/3/1995	4/6/2009
	D Pope Thomas	4/17/2001	4/6/2009
<b>Henry</b>			
D	Greg Duckett		
R	Jimmy Wallace		
	D Paul David Hessing	4/6/2009	4/6/2009
	D Sylvia C. Humphreys	5/19/1998	4/6/2009
<b>Humphreys</b>			
D	Greg Duckett		
R	Tom DuBois		
	D Von Gardner	4/3/1995	4/6/2009
	D Jess S. Bowen, III	1/14/2003	4/6/2009
<b>Total Holdovers: 10</b>			

# New Appointment Status

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10-Apr-12

		Appointment
<b>Polk</b>	D Tom Wheeler / R Judy Blackburn	
	R Ronnie O'Neal	4/9/2012
<b>Wayne</b>	D Greg Duckett / R Jimmy Wallace	
	R Jerry D. Pigg	4/9/2012

**Total New Commissioners: 2**

## Kathy Summers

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**From:** Greg Duckett [Greg.Duckett@BMHCC.org]  
**ent:** Monday, April 09, 2012 9:40 AM  
**To:** Kathy Summers  
**Cc:** Christie Mullins  
**Subject:** Unisyn voting machine

*I apologize for not being able to personally attend the meeting today; however, given that I was one of the two commissioners who visited the operation of the Unisyn voting machines in Springfield in Christian County, MO on February 7, 2012, I want my colleagues to know my perspective on the machines. As a State Election Commissioner member, I am in support of the approval of certification of the machine. I found the machines to be very user friendly and practical. My only concern regarding the machine is the holding bin/box that is used to retained the ballots after they have been filed. As displayed the cast ballots randomly drop into a large retainer and if there is a large number of ballots cast and the need for a recount the ballots could become creased or folded thereby making a recount difficult since the counter relay on the ballot not having folds in them. I believe this issue can be overcome by either limiting the number of ballots stored in a retainer or the company developing a system to correlate the ballots to prevent or minimize folding of the ballots.*

*Please share this with My fellow commissioners and Mark. Thanks*

*Sent from my iPhone*

*Baptist 100. Well beyond a century.*

*This message and any files transmitted with it may contain legally privileged, confidential, or proprietary information. If you are not the intended recipient of this message, you are not permitted to use, copy, or forward it, in whole or in part without the express consent of the sender. Please notify the sender of the error by reply email, disregard the foregoing messages, and delete it immediately.*

*P Please consider the environment before printing this email...*

## Kathy Summers

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**From:** Kathy Summers  
**ent:** Tuesday, April 03, 2012 3:30 PM  
**To:** 'Judy Blackburn'; 'Tom DuBois'; 'Greg Duckett'; 'jtommyhead@gmail.com'; 'Phyllis Covington'; Tom Wheeler (tomwheeler2@comcast.net); 'Tom Wheeler'; 'Kent Younce'; 'Kent Younce'  
**Cc:** Mark Goins; 'Carnice Caskey'; 'Christie Mullins'; 'Phyllis Covington'; 'Derrick Head'  
**Subject:** FW: Per conversation with Mae Beavers

*Per the request of Commissioner Younce, I am forwarding you a e-mail he received regarding Cannon County.*

*Please see e-mail below.*

*Thank you.*

*Kathy*

*Kathy Summers*

*Elections Specialist - TN (615) 253-4585 - Direct Line*

*[Kathy.Summers@tn.gov](mailto:Kathy.Summers@tn.gov) - E-mail Address*

*<http://tn.gov/sos/election/index.htm>*

*Secretary of State*

*Division of Elections*

*Wm R. Snodgrass - Tennessee Tower, 9th Floor*

*312 Rosa L. Parks Ave*

*Nashville, TN 37243*

*The Mission of the Office of the Secretary of State is to exceed the expectations of our customers, the taxpayers, by operating at the highest levels of accuracy, cost-effectiveness, and accountability in a customer-centered environment.*

**From:** Kent Younce [<mailto:kentyounce@comcast.net>]

**Sent:** Tuesday, April 03, 2012 2:55 PM

**To:** Kathy Summers

**Subject:** Fwd: Per conversation with Mae Beavers

Can you forward to Mark and other Commissioners?

Sent from my iPhone

Begin forwarded message:

**From:** "Stan Dobson" <[election@dtccom.net](mailto:election@dtccom.net)>

**Date:** April 2, 2012 2:34:22 PM EDT

**To:** <[kentyounce@comcast.net](mailto:kentyounce@comcast.net)>

**Subject:** Per conversation with Mae Beavers

Mr. Younce,

Ref: Louise Mayo-Cannon County Republican

At our last several meetings Mrs. Mayo has been following in the footsteps of the Democratic members of our Election Commission. She has voted with these members on everything they are wanting or doing.

She has even backed one of them that has personally called me a liar at several meetings with the public being present. I feel that with the lack of support from Mrs. Mayo that this will hurt our county in many ways. Because of this it has created a hostile work environment. I would like to see Mrs. Mayo removed from the Cannon County Election Commission and have Mae Beavers nominate someone new. Election Commissioner Matt Studd will verify this information. If you need any further information please call me at 615-563-5650.

Thank you,

Stanley Dobson  
Cannon County AOE

Matthew Studd  
213 Bradyville Rd.  
Woodbury, TN. 37190-6113  
615-496-3151 cell

April 3, 2012

Kent Younce,

I am requesting your assistance in dealing with a concern on our Cannon County Election Commission. At recent meetings, Louise Mayo, who is a Republican appointed member, has cause considerable concern with her conduct, statements and votes at several of our recent meetings. I provide the following examples that speak to the concerns;

- 1.) At our Nov. 2011 meeting, our Commission discussed consolidating some of our polling places that had very low voter volume and some of which were not in their proper precinct boundaries and records did not contain appropriate authorization from the previous or current State Election Coordinator. At this meeting, the number of impacted voters, numbers of votes cast in those affected polling locations, maps with boundary lines were reviewed, discussed and evaluated. The motion to consolidate was made, seconded and approved unanimously. Two months later, after a considerable of time, resources and energy had been spent by AOE Stan Dobson and Deputy Dorina Mankin to update files, records and voter card information, Louise Mayo joined with the two Democrat Commissioners and switched her position when the matter was revisited in January. The reason she cited during the meeting, was that she was tired of all the calls she had received from the Short Mountain residents opposed to the consolidation. Flip flop for wrong motives and reasons.
- 2.) At the February meeting, when discussing the additional work load, and extra hours that Deputy Mankin was required to work in cleaning up the mess of polling location reversal, Jackie Gannon, a long standing Democrat Commission Member stated that AOE Stan Dobson did not need to work his Deputy those additional hours because Louise Mayo had offered to work at the office for little or no pay, but had been turned down. How this statement, if true, (was not denied by Louise Mayo) would suggest that she and Jackie Gannon had discussed this allegation, likely violating the Open Records Act.
- 3.) At our March meeting, Louise Mayo would not support a motion I had made, regarding a previous unanimous approved budget amendment request to cover the additional working hours of Deputy Mankin. In fact she voted again with the Democrats as this subject went back and forth.

I believe Commissioner Louise Mayo should be questioned regarding her votes and positions I have described. Further, I believe her answers to such questions would confirm the need to replace her on our Cannon County Election Commission.

I respectfully request your help in bringing a proper remedy to this matter and concern.

Sincerely,

Matthew Studd, Election Commissioner

Washington County Democratic Party  
Walter Buford, Chairman

March 11, 2012

Tennessee Election Commission  
Jimmy Wallace  
312 Rosa L. Parks Ave.  
9<sup>th</sup> Floor, William R. Snodgrass Tennessee Tower  
Nashville, TN 37243

Dear Mr. Wallace,

The Executive Committee of the Washington County Democratic Party met Thursday, March 8, 2012. The reason for the meeting was to discuss what action should be taken in response to the conduct of Democratic Election Commissioner Thomas Graham, and concerns about the lack of representation that Democratic voters have in the Washington County Election Commission office.

A resolution was passed in order to express no confidence in Mr. Graham's performance of his duties and to request his resignation from the Commission. Thomas Graham, one of two Democratic commissioners on the Washington County Election Commission, voted with two Republican Commissioners for the dismissal of Connie Sinks as Administrator. Democratic Commissioner Leslie Lacy and Republican Commissioner Sue Chinouth voted against the dismissal of Ms. Sinks. The action to terminate Ms. Sinks' employment was taken without proper due process which would have required a systematic and thorough evaluation of Ms. Sinks' job performance by the full five-member Commission. Circumstances closely linked to Ms. Sinks' termination indicate the likelihood that the two Republican Commissioners, Jon Ruetz and Janet Willis, and the one Democratic Commissioner, Thomas Graham, engaged in one or more violations of the Sunshine Law.

A second resolution was passed requesting that the State Election Commission conduct a show cause hearing in order to determine if Thomas Graham's conduct constituted one or more violations of the Sunshine Law and thereby would be subject to removal for cause by the State Election Commission. This resolution also included a request to you, the State Election Commission, to immediately remove Mr. Graham from the Washington County Election Commission.

Please advise us as of your plan of action, via e-mail ([drycreektn@gmail.com](mailto:drycreektn@gmail.com)); telephone (423.282.0704) or by letter (2105 Carroll Creek Rd., Gray, TN 37615)

Respectfully yours,

  
Washington County Democratic Party  
Executive Committee

**2-12-101. Commissioners — Appointment — Removal — Legal representation.**

(a) The state election commission shall appoint, on the first Monday in April of each odd-numbered year, five (5) election commissioners for each county, for terms of two (2) years and until their successors are appointed and qualified. The five (5) commissioners shall be the county election commission.

(b) The state election commission shall remove a commissioner who becomes unqualified and may remove or otherwise discipline a commissioner for cause.

(c) County election commissions shall be represented in legal proceedings as follows:

(1) If the legal proceeding names the county election commissioners as defendants and the lawsuit involves a municipal election, the municipality concerned shall furnish counsel to represent the commissioners;

(2) If the election involved in the legal proceedings is that of a county election, the county shall furnish counsel for the commissioners and if the election involved in the legal proceedings attacks a state law or presents a question concerning a state or federal election, the attorney general and reporter shall represent the commissioners either by the attorney general and reporter's own staff or by such counsel as the attorney general and reporter may designate;

(3) The counsel furnished, whether by municipality or county, shall be that chosen by the election commission; and

(4) If, in order to properly discharge its duties, the county election commission has to bring legal action against a county or municipality, the compensation for the commission's legal representation shall be borne by the county or municipality as the case may be.

(d) The county election commission created by this section is the immediate successor to the commissioners of elections for each county. Wherever in the Tennessee Code the commissioners of elections for counties are referred to, the term "county election commission" shall be substituted.

Acts 1972, ch. 740, §§ 1, 7; 1974, ch. 535, § 1; 1979, ch. 316, § 3; T.C.A., § 2-1201; Acts 1980, ch. 609, § 6; 1993, ch. 208, § 2.

**Section to Section References.** Chapters 1-19 are referred to in § 2-13-319.

**Textbooks.** Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 7.

**Attorney General Opinions.** Conflicts of interest involving state and county election commissions,

OAG 06-159 (10/9/06).

**Comparative Legislation.** County boards and commissions:

**Ala.** Code. § 11-3-1.

**Ark.** Code § 7-4-102 et seq.

**Ga.** O.C.G.A. § 21-2-111 et seq.

**Ky.** Rev. Stat. Ann. § 117.035.

**Miss.** Code Ann. § 23-15-211 et seq.

**N.C.** Gen. Stat. § 163-30 et seq.

**Va.** Code

**Cited:** City of Memphis v. Shelby County Election Comm'n, 146 S.W.3d 531, 2004 Tenn. LEXIS 802 (Tenn. 2004).

## **NOTES TO DECISIONS**

1. Standing of Taxpayers.
2. Payment of Attorney Fees.
3. Storage of Voting Machines.

### **1. Standing of Taxpayers.**

Suit brought by county district attorney general upon information of 10 taxpayers and citizens of that county, to recover attorneys' fees paid by acting chief executive officer to law firms for services in defending certain election suits, which payment was subsequently ratified by county commission, was properly dismissed for plaintiffs' lack of standing. State ex rel. Vaughn v. King, 653 S.W.2d 727, 1982 Tenn. App. LEXIS 457 (Tenn. Ct. App. 1982).

### **2. Payment of Attorney Fees.**

This section specifically gives to the "county" the power to hire attorneys to defend the county election commission in election contests, and where that authority is expressly given, the county executive [now county mayor] should be able to pay them. The general provisions of § 5-6-112 do not dictate otherwise. State ex rel. Vaughn v. King, 653 S.W.2d 727, 1982 Tenn. App. LEXIS 457 (Tenn. Ct. App. 1982).

### **3. Storage of Voting Machines.**

Where election commission filed petition for writ of mandamus and declaratory judgment on April 10, 1981, to compel board of commissioners to provide adequate and economically feasible storage for the county's 1,200 voting machines, the lease on the premises where the machines were then being stored being due to expire on April 30, 1981, and the county having failed to exercise its option to renew within 60 days of expiration as required by the lease, the trial court was correct in refusing to issue writ of mandamus and in denying an award of attorneys' fees to the election commission, because the suit was premature, since the county was fulfilling its duty to provide storage for the machines, and the election commission had made no showing that the county would not do so in the future. State ex rel. Shelby County Election Com. v. Shelby County Bd. of Comm'rs, 656 S.W.2d 9, 1983 Tenn. App. LEXIS 596 (Tenn. Ct. App. 1983).

## **Decisions Under Prior Law**

1. Status of Commission.
2. Powers of Commission.

### **1. Status of Commission.**

County election commission could maintain action for declaratory judgment for purpose of determining whether county or city was liable for expenses incurred by commission in holding special referendum election on amendment of city charter under private acts. *Abercrombie v. Chattanooga*, 203 Tenn. 357, 313 S.W.2d 256, 1958 Tenn. LEXIS 311 (1958).

The county election commission is not an arm of the county government. *Abercrombie v. Chattanooga*, 203 Tenn. 357, 313 S.W.2d 256, 1958 Tenn. LEXIS 311 (1958).

The county election commission has its legal existence by virtue of the general law of the state and is not a part of any political subdivision of the state. *Abercrombie v. Chattanooga*, 203 Tenn. 357, 313 S.W.2d 256, 1958 Tenn. LEXIS 311 (1958).

### **2. Powers of Commission.**

County election commission had authority to hold special referendum election for benefit of city for purpose of determining whether or not city charter was to be amended under provisions of private acts, and city rather than county was liable for expenses of holding such election. *Abercrombie v. Chattanooga*, 203 Tenn. 357, 313 S.W.2d 256, 1958 Tenn. LEXIS 311 (1958).

**Collateral References.** Election officers <key> 144.46-58.



### JURISDICTION AND VENUE

2. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (a)(4) for causes of action arising under the Fourteenth Amendment to the United States Constitution and federal law.

3. Venue in this district is proper under 28 U.S.C. § 1391(b)(1), as all Defendants officially reside in the Middle District of Tennessee, and is also proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the claims asserted have occurred, and continue to occur, in the Middle District of Tennessee.

### PARTIES

4. Plaintiff Lincoln Davis is a resident of Pall Mall, Fentress County, Tennessee. During the course of his career he has served the public as Mayor of Byrdstown, Pickett County, Tennessee; Representative in the Tennessee House of Representatives; Senator in the Tennessee State Senate; and U.S. Representative for the 4th Congressional District of Tennessee. He first registered to vote in Tennessee in 1964 and has voted in every subsequent election. He registered to vote in Fentress County, Tennessee, at the time he established his domicile there in 1995, and he has both lived and voted in Fentress County ever since. Mr. Davis brings this suit on his own behalf and on behalf of all similarly situated Tennessee citizens whom the State has illegally purged from the voting rolls under color of law.

5. The Defendants in this action are:

- a. Bill Haslam, Governor of the State of Tennessee, who is charged under Art. III, § 10 of the Tennessee Constitution to “take care that the laws be faithfully executed.”

- b. Tre Hargett, Tennessee Secretary of State, who holds office pursuant to Article III, Section 17 of the Tennessee Constitution.
  - c. Mark Goins, Tennessee Coordinator of Elections, who is appointed by the Secretary of State pursuant to TENN. CODE ANN. § 2-11-201. Mr. Goins is charged with obtaining and maintaining “uniformity in the application, operation and interpretation of the election code, and acts under the authority of the Tennessee Secretary of State. *Id.*
6. All Defendants are sued in their official capacity only, and not individually.

### FACTS

#### Plaintiff Unlawfully Purged from the Voter Rolls and Denied the Right to Vote

7. Lincoln Davis established domicile and registered to vote in Fentress County, Tennessee in 1995. He is still a resident of Fentress County and has voted in Fentress County in every election since 1995.

8. On the evening of March 6, 2012, Mr. Davis arrived at his designated polling place in Pall Mall, Tennessee to vote in the Tennessee primary election, that election being held under the color of state law.

9. Upon arriving at the polling place, he submitted an application for a ballot and presented his government issued photo ID to an election official, as required by state law. TENN. CODE ANN. § 2-7-112(a).

10. The official, however, informed Mr. Davis his name did not appear on the voter rolls and that he was, therefore, not entitled to vote.

11. Mr. Davis explained to the official that there had to be some mistake, as Mr. Davis had lived and voted in Fentress County continuously since 1995.

12. Moreover, Mr. Davis had never received notice from the State of Tennessee or any other government official that his name had been purged from the voter rolls. Likewise, Mr. Davis had never requested that his name be removed from the voter rolls, Mr. Davis had never been convicted of a felony, and Mr. Davis has not moved his residence from Pall Mall, Fentress County, Tennessee, since 1995. Finally, and obviously, Mr. Davis is not deceased.

13. An election judge at the precinct considered the issue — making a call to some unidentified individual in the process. The judge ultimately told Mr. Davis that “It’s my decision that you can’t vote,” or words to that effect. This was at approximately 6:20PM, local time, less than an hour before the polls were scheduled to close at 7:00PM.

14. No one at the polling place offered Mr. Davis a provisional ballot or explained that he had the right to vote provisionally, under 42 U.S.C. § 15482(a)(1). Additionally, by denying Mr. Davis the right to vote based on the opinion of a *single* election judge, rather than the unanimous decision of a three-judge panel, the election officials violated TENN. CODE ANN. § 2-7-125.

15. Mr. Davis then returned to his home in Pall Mall, where he called the Administrator of Elections for Fentress County, Joey Williams, at approximately 6:30PM.

16. Mr. Williams suggested that Mr. Davis return to the polling place and register to vote, at which point he would be permitted to cast a provisional ballot. Mr. Davis, however, declined, because, under Tennessee law, TENN. CODE ANN. § 2-2-109(a), a voter must be registered to vote at least 30 days before an election in order to vote in that election.

17. At some point after that, Defendant Mark Goins, Tennessee Coordinator of Elections, called Mr. Davis and again suggested that Mr. Davis return to the polls, register, and

cast a provisional ballot. Mr. Davis declined, because such would be a clear violation of TENN. CODE ANN. § 2-2-109.

18. As a result of Tennessee officials wrongfully purging Lincoln Davis' voter registration record, under color of law, Mr. Davis was not able to vote on March 6, 2012.

Tennessee's System for Purging Voter Registration Records Violates State and Federal Law

19. Under Title 42 of the U.S. Code, Section 1973gg-6(a)(3), the State of Tennessee has an obligation to ensure that "the name of a registrant may not be removed from the official list of eligible voters," except under narrow, strictly defined circumstances.

20. Specifically, under § 1973gg-6, a State may only purge the name of a registered voter if:

- a. The registrant so requests;
- b. The registrant is disqualified under state law, by reason of criminal conviction or mental incapacity;
- c. The registrant has died;
- d. The registrant fails to vote or to respond in writing to an official notice of a pending purge within two federal election cycles; or
- e. The registrant has moved to another jurisdiction.

21. Federal law further provides, under 42 U.S.C. § 1973gg-6(d), that even if State or local election officials believe that a registrant has moved to another jurisdiction, they may not remove that registrant's name from the list of eligible voters unless:

- a. State or local election officials provide written notice to the registrant; and

b. The registrant then fails to either respond to the letter OR to vote in any election between the date of notice and the day after the date of the second general election for Federal office that occurs after the date of the notice.

22. Tennessee State law provides similar protection to registered voters under TENN. CODE ANN. § 2-2-109.

23. Tennessee law also expressly provides that the procedures to be followed in *transferring* registration “when a voter moves outside the precinct in which such voter is registered” are the same as the procedures for purging that individual’s voter registration. TENN. CODE ANN. § 2-2-129(b) (cross-referencing section 2-2-106(c)–(d)).

24. No election official, State or local, has ever sent Mr. Davis notice that his registration was at risk of being purged or offering him an opportunity to verify his Fentress County residency.

25. Accordingly, the removal of Lincoln Davis’ name from the list of eligible voters, in and of itself, violated both federal and Tennessee law.

26. Furthermore, since this unlawful removal prevented Mr. Davis from voting in the March 6, 2012 Tennessee Primary Election, State and local election officials, acting under color of law, deprived Mr. Davis of his Due Process Rights under the Fourteenth Amendment of the United States Constitution.

#### **CLASS ALLEGATIONS**

27. Plaintiff, Lincoln Davis, brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on his own behalf and on behalf of all Tennessee citizens who:

a. have lawfully registered to vote in the State, and

b. whom the State, or local election officials acting on behalf of the State, has wrongfully purged from its list of eligible voters since February 11, 2009.

28. Plaintiff is a member of the class he seeks to represent.

29. The class is sufficiently numerous that joinder of all members is impractical, satisfying FED. R. CIV. P. 23(a)(1). The very nature of class members' injuries makes joinder difficult or impossible, as many will not even learn that they have been purged until they attempt to vote. Furthermore, according to Tennessee's own election statistics, obtained from the Tennessee Department of State's website, <http://www.tn.gov/sos/election/data/index.htm>, more than 70,000 registered voters were purged from the State's voting rolls in the six months ending on December 1, 2011 (Attached as Exhibit A).

30. There are questions of law and fact common to all class members, satisfying FED. R. CIV. P. 23(a)(2). These common questions include, but are not limited to:

- a. Whether the Tennessee Coordinator of Elections took steps to ensure that any and all persons to be purged from the voter registration rolls were within the narrow categories of voters who may lawfully be purged;
- b. Whether the Tennessee Coordinator of Elections had an obligation to provide class members with notice and a chance to respond before purging or causing to be purged class members' names from the State list of eligible voters; and
- c. Whether, if such an obligation did exist, the Tennessee Coordinator of Elections fulfilled that obligation.

31. The claims of Lincoln Davis are typical of the claims of the class, thus satisfying FED. R. CIV. P. 23(a)(3). He, like all class members, was wrongfully purged from Tennessee's list of eligible voters due to the State's policies and inadequate safeguards in administering and

maintaining its eligible voter list. Plaintiff is not alleging claims or violations unique to his polling place in Fentress County, and Mr. Davis's status as a former United States Congressman does not distinguish his claims from those of his fellow class members, all qualified registered Tennessee voters who were improperly purged.

32. Plaintiff will fairly and adequately represent and protect the interests of the class, and he has retained competent counsel experienced in voting rights and class action litigation, thus satisfying FED. R. CIV. P. 23(a)(4).

33. By permitting local election officials to purge the names of registered voters, who were not within the narrow categories of those voters who may lawfully be purged from the voter rolls, and without following the required statutory procedures, the State of Tennessee has acted on grounds that apply generally to all members of the class, such that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole. Accordingly, Plaintiff is entitled to pursue his claims as a class action, pursuant to FED. R. CIV. P. 23(b)(2).

### **CAUSES OF ACTION**

#### **COUNT ONE: VIOLATION OF 42 U.S.C. § 1973gg, 42 U.S.C. § 1983**

34. The allegations in Paragraphs 1 through 33 of the Complaint are hereby incorporated as if set forth initially herein.

35. Plaintiff brings this claim on behalf of himself and the class he seeks to represent.

36. Federal law expressly grants a private right of action, for injunctive and declaratory relief, to individuals who have been aggrieved by a state or local government's failure to lawfully maintain its list of eligible voters. 42 U.S.C. § 1973gg-9(b).

37. Furthermore, since the violation complained of occurred within 30 days before the date of an election for federal office, Plaintiff has no obligation to notify the Chief Election Officer of the State prior to filing suit. *Id.* § 1973gg-9(b)(3).

38. Under federal law, it is the State that has ultimate responsibility for implementing, “in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the *State level*.” 42 U.S.C. § 15483(a)(1)(A) (emphasis supplied).

39. As part of its obligations under federal law, Tennessee is required to include safeguards in its election system to “ensure that eligible voters are not removed in error from the official list of eligible voters.” *Id.* § 15483(a)(4)(B).

40. Plaintiff, Lincoln Davis, was removed from the official Tennessee list of eligible voters, in violation of these legal obligations, by actions of the Defendants, under the color of law.

41. Defendants — through their delegation of responsibility to local election administrators, combined with their failure to implement safeguards capable of preventing local administrators from wrongfully purging registered voters — violated their obligations under federal law.

42. Defendants’ unlawful practices described above have deprived numerous State citizens of their federal right to remain on the State’s list of eligible voters.

COUNT TWO: VIOLATION OF 42 U.S.C. § 1983 AND AMENDMENT FOURTEEN OF  
THE UNITED STATES CONSTITUTION

43. The allegations in Paragraphs 1 through 42 of the Complaint are hereby incorporated as if set forth initially herein.

44. Plaintiff brings this claim on behalf of himself and the class he seeks to represent.

45. Title 42 of the U.S. Code, Section 1983, prohibits any person acting under color of law to subject or cause to be subjected any other person “to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”

46. Federal law secures the rights of individuals not to be removed from the State list of eligible voters except under narrow circumstances and according to specific procedures. 42 U.S.C. § 1973gg-6.

47. Mark Goins, in his role as State Coordinator of Elections and acting under color of law, either removed or allowed county election administrators to remove names from the list of eligible voters and failed to implement safeguards capable of preventing such officials from wrongfully purging State residents from Tennessee’s list of eligible voters.

48. Accordingly, Mark Goins, as State Coordinator of Elections, deprived Lincoln Davis, and all members of the proposed class, of rights secured by United States law, acting under the color of law.

**COUNT THREE: VIOLATION OF TENN. CODE ANN. § 2-2-106(c) and (d),  
CONSTITUTING A VIOLATION OF 42 U.S.C. § 1983, AMENDMENT FOURTEEN OF THE  
UNITED STATES CONSTITUTION**

49. The allegations in Paragraphs 1 through 48 of the Complaint are hereby incorporated as if set forth initially herein.

50. Plaintiff brings this claim on behalf of himself and the class he seeks to represent.

51. The Tennessee Code, Section 2-2-106(c), provides State residents with a protected interest in having their names remain on the Tennessee list of eligible voters, subject only to certain specified exceptions.

52. Because Mark Goins, as State Coordinator of Elections, removed, or caused to be removed, Tennessee residents from the State voter rolls without following the statutorily prescribed notice requirements, he has deprived Lincoln Davis, and all members of the proposed class, of their constitutional right to due process in violation of the Fourteenth Amendment of the United States Constitution, and 42 U.S.C. § 1983.

COUNT FOUR: VIOLATION OF INDIVIDUAL NAMED PLAINTIFF'S RIGHT TO VOTE,  
THUS VIOLATING 42 U.S.C. § 1983 AND AMENDMENT FOURTEEN OF THE UNITED  
STATES CONSTITUTION

53. The allegations in Paragraphs 1 through 52 of the Complaint are hereby incorporated as if set forth initially herein.

54. This claim for relief is brought on behalf of Named Plaintiff, Lincoln Davis, only.

55. Fentress County, Tennessee, through its duly authorized election officials and acting under color of law, and acting under the general direction of the Tennessee Coordinator of Elections, wrongfully purged Mr. Davis from the Tennessee list of eligible voters, without providing any notice or an opportunity to respond.

56. Furthermore, since Mr. Davis, through no fault of his own, did not learn about this unlawful purging until Election Day itself, less than an hour before polls were scheduled to close in Tennessee, the effect of this unlawful purging was to deny him his Constitutionally protected right to vote.

57. Federal law requires that if election officials challenge the right of an individual to vote, because his or her name does not appear in the voting rolls, then an official, "*at the polling place shall* notify the individual that the individual may cast a provisional ballot in that election." 42 U.S.C. § 15482(a)(1). Accordingly, any offer by a State or county election official,

after Mr. Davis had left the polling place, and less than half an hour before the close of the polls, to cast a provisional ballot, is legally deficient.

58. Mark Goins, in his role as State Coordinator of Elections, acting under color of law, authorized county election officials to remove names from the list of eligible voters and failed to implement safeguards capable of preventing Fentress County officials from wrongfully removing Mr. Davis' name.

59. Accordingly, Mark Goins, acting in his official capacity, prevented Mr. Davis from voting, violating Mr. Davis' rights under the Fourteenth Amendment to the United States Constitution, while acting under the color of law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the relief as follows:

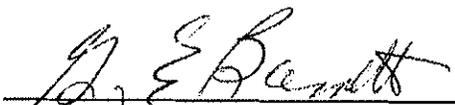
1. An order providing expedited discovery pursuant to Rules 26(d), 30(a), 33(b), 34(b), and 36(a) of the Federal Rules of Civil Procedure, and an expedited declaratory judgment pursuant to 28 U.S.C. § 2201;
2. Certification of the class under Rule 23(b)(2), and designation of Named Plaintiff Lincoln Davis as representative of this class;
3. A declaratory judgment that the practices complained of in this Complaint are unlawful and violate 42 U.S.C. § 1973gg, as well as 42 U.S.C. § 1983, Amendment Fourteen of the United States Constitution, and TENN. CODE ANN. § 2-2-106(c);
4. A preliminary and permanent injunction against Defendants, requiring them to restore to Tennessee's list of eligible voters all Tennessee citizens who have been improperly purged from that list since Mr. Goins was appointed as State Coordinator of Elections on February 11, 2009;

5. An award to Plaintiff requiring that Defendants pay the costs incurred by Plaintiff, including his reasonable attorneys' fees and costs, to the extent allowable by law, including under 42 U.S.C. §§ 1973 and 1988; and

6. Such other and further legal and equitable relief to which Plaintiff may be entitled and as this Court deems necessary, just and proper.

Dated: March <sup>12</sup>12, 2012

Respectfully submitted,



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**GEORGE E. BARRETT, #2672**  
**DOUGLAS S. JOHNSTON Jr., #5782**  
**DAVID W. GARRISON, #24968**  
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*Attorneys for Plaintiffs*

**VERIFICATION OF COMPLAINT**

I, Lincoln Davis, under penalty of perjury states as follows:

I am familiar with the facts as stated herein and have read the Complaint and state under oath the facts contained herein are true to the best of my knowledge, information and belief. I make this Verification pursuant to 28 U.S.C. § 1746 and declare under the penalty of perjury under the law of the United States of America, that the foregoing is true and correct.

Executed this 12 day of March, 2012.

  
\_\_\_\_\_  
LINCOLN DAVIS

# EXHIBIT A

## December 1, 2011 Six Month Summary Report

24-Jan-12

COUNTY	ENDING ACTIVE	ENDING INACTIVE	NEW REGISTRATION	NEW INACTIVE	PURGE ACTIVE	PURGE INACTIVE
ANDERSON	39,550	8,049	981	6,469	485	307
BEDFORD	20,883	2,565	456	90	211	131
BENTON	9,158	2,771	152	2,746	149	41
BLED SOE	7,313	1,227	231	169	139	42
BLOUNT	63,874	8,092	1,613	535	779	159
BRADLEY	56,709	3,186	1,025	40	456	3,407
CAMPBELL	22,407	1,725	431	884	246	69
CANNON	7,681	466	165	420	105	19
CARROLL	16,071	3,048	374	86	348	93
CARTER	29,411	4,202	648	567	471	1,245
CHEATHAM	19,870	3,832	481	25	285	117
CHESTER	8,248	1,314	282	3	96	43
CLAIBORNE	15,551	2,167	338	305	329	0
CLAY	4,587	1,676	95	840	53	74
COCKE	20,546	1,640	521	31	318	39
COFFEE	28,108	2,802	732	77	479	76
CROCKETT	7,798	901	152	22	133	48
CUMBERLAND	32,815	5,853	1,029	0	444	165
DAVIDSON	286,246	58,600	8,420	5,098	4,051	2,458
DECATUR	6,462	827	131	696	114	612
DEKALB	9,817	2,765	699	2,625	606	48
DICKSON	24,979	4,763	739	2,492	422	540
DYER	19,540	2,323	348	58	271	56
FAYETTE	23,698	2,334	618	844	310	100
FENTRESS	9,969	2,238	241	1,606	117	47
FRANKLIN	22,251	2,563	575	809	392	53
GIBSON	26,946	3,231	679	107	417	90
GILES	16,218	2,142	470	45	273	63
GRAINGER	12,514	899	249	498	216	33
GREENE	37,232	2,690	760	311	395	51
GRUNDY	6,083	1,098	132	0	72	40
HAMBLEN	30,909	2,485	659	226	417	148
HAMILTON	213,568	5,106	4,973	0	2,505	5,751
HANCOCK	4,834	228	55	0	96	17
HARDEMAN	15,028	1,197	217	1,088	227	43
HARDIN	14,088	1,796	346	0	253	43
HAWKINS	27,603	7,256	740	7,037	356	92
HAYWOOD	9,776	2,223	198	1,958	233	29
HENDERSON	15,489	2,418	348	32	225	69
HENRY	17,523	6,022	355	666	359	98
HICKMAN	13,146	922	240	42	237	35
HOUSTON	4,543	609	77	7	56	17
HUMPHREYS	11,263	946	219	384	213	153
JACKSON	8,194	190	144	25	161	2
JEFFERSON	25,725	4,048	763	216	412	82
JOHNSON	10,432	663	165	0	99	0
KNOX	258,469	15,820	5,125	1,779	2,575	306
LAKE	3,575	596	55	159	59	20
LAUDERDALE	13,556	544	168	58	249	64
LAWRENCE	22,001	4,276	475	0	234	80
LEWIS	6,752	1,433	116	1,257	160	6
LINCOLN	17,275	2,377	418	1,117	219	30

COUNTY	ENDING ACTIVE	ENDING INACTIVE	NEW REGISTRATION	NEW INACTIVE	PURGE ACTIVE	PURGE INACTIVE
LOUDON	27,817	3,861	734	22	333	132
MACON	11,607	1,430	2,227	1	2,271	4
MADISON	55,098	7,563	1,202	3,944	740	172
MARION	14,610	5,187	408	4,513	170	147
MARSHALL	15,029	2,737	368	2,667	285	38
MAURY	47,914	1,958	1,348	69	682	62
MCMINN	26,486	3,247	634	1,932	441	640
MCNAIRY	14,389	486	358	1	310	18
MEIGS	6,448	1,115	169	7	73	48
MONROE	23,135	7,304	513	5,077	325	135
MONTGOMER	79,918	13,620	2,630	130	750	187
MOORE	4,322	113	94	9	96	8
MORGAN	11,619	159	289	0	170	154
OBION	16,866	3,638	303	709	234	85
OVERTON	12,661	1,324	320	504	222	19
PERRY	4,797	565	98	359	83	212
PICKETT	3,647	478	61	59	64	232
POLK	10,732	113	229	5	203	3
PUTNAM	34,858	7,380	932	245	495	214
RHEA	18,119	1,145	357	260	189	23
ROANE	30,703	3,872	594	272	365	66
ROBERTSON	34,014	4,948	982	6	390	139
RUTHERFORD	126,014	18,479	4,174	8,779	1,709	497
SCOTT	13,853	511	180	6	191	13
SEQUATCHIE	8,889	447	219	172	147	6
SEVIER	41,940	9,831	2,136	5,182	1,093	2
SHELBY	545,772	63,955	10,390	269	3,998	549
SMITH	10,756	1,862	235	1,619	217	34
STEWART	7,293	1,203	191	123	149	38
SULLIVAN	85,293	582	2,003	355	547	665
SUMNER	86,343	10,561	2,436	7,564	966	7,073
TIPTON	31,766	6,266	1,027	4,752	476	905
TROUSDALE	4,657	671	95	295	84	8
UNICOI	9,609	1,534	227	1,186	136	15
UNION	10,525	1,585	245	1,387	226	10
VAN BUREN	4,020	539	57	131	60	16
WARREN	18,297	3,812	478	1,222	296	68
WASHINGTON	63,419	8,796	1,859	169	801	213
WAYNE	9,521	848	183	41	108	13
WEAKLEY	16,842	3,602	586	2,950	408	58
WHITE	14,422	1,881	313	1,543	310	291
WILLIAMSON	112,059	13,668	3,697	389	1,143	282
WILSON	62,800	8,946	1,611	55	772	1,430
Grand Total:	3,447,163	434,966	86,795	103,529	45,259	32,275

**ENDING ACTIVE PLUS ENDING INACTIVE EQUALS TOTAL REGISTRATION**

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

FILED  
2012 MAR 16 PM 2:09  
CLERK OF THE CHANCERY CT.  
DAVIDSON COUNTY, TENNESSEE  
DC&M

KERMIT L. MOORE, JR., VANECIA )  
KIMBREW, FELECIA D. BOYD, )  
REGENNA WILLIAMS, ROSHUN )  
AUSTIN, WILLIE MARTIN, L. )  
LASIMBA M. GRAY, JR., and G.A. )  
HARDAWAY, SR., )

Case No. 12.402-111

Plaintiffs, )

v. )

STATE OF TENNESSEE, BILL )  
HASLAM, in his official capacity as )  
Governor of the State of Tennessee, TRE )  
HARGETT, in his official capacity as )  
Secretary of State of the State of Tennessee, )  
and MARK GOINS, in his official capacity )  
as Coordinator of Elections of Tennessee, )

COMPLAINT

Defendants. )

I. INTRODUCTION

1. Despite the fact that the Tennessee General Assembly had in front of it a State Senate plan that minimized county splits while still complying with federal law, the General Assembly instead enacted a plan that needlessly split counties, thus violating the Tennessee Constitution.
2. Plaintiffs are individual registered voters who seek declaratory and injunctive relief to enforce Article II, Section 6 of the Tennessee Constitution.
3. Plaintiffs seek a declaratory judgment that the newly-enacted Tennessee State Senate violates Article II, Section 6 of the Tennessee Constitution. Plaintiffs seek an injunction prohibiting the calling, holding, supervising, or certifying of any future Tennessee State

Senate elections under the challenged redistricting plan. Plaintiffs seek the creation of state senate plan that minimizes the number of counties split while still complying with federal and state law.

## II. JURISDICTION AND VENUE

4. This action for declaratory and injunctive relief is brought under T.C.A. § 29-14-103 and Tenn. R. Civ. P. 65.
5. This Court has jurisdiction over this action pursuant to T.C.A. § 16-11-101 *et seq.*
6. Pursuant to T.C.A. § 4.4.104(a), the exclusive venue for this action is the Chancery Court for Davidson County.

## III. PLAINTIFFS

7. PLAINTIFF KERMIT L. MOORE, JR., resides at 6585 Pine Top Circle South, Memphis, Tennessee, 38141. An African-American citizen and resident of Shelby County, he is a member of numerous local civic engagement groups and is a registered voter. He lives in current State Senate District 31 and lives in State Senate District 33 in Tennessee's newly enacted State Senate Plan.
8. PLAINTIFF VANECIA KIMBROW resides at 10836 Whisper Hallow Cove, Collierville, Tennessee, 38017. An African-American citizen and resident of Shelby County, she is a member of numerous local civic engagement groups and is a registered voter. She lives in current State Senate District 33 and lives in State Senate District 32 in Tennessee's newly enacted State Senate Plan.
9. PLAINTIFF FELECIA D. BOYD resides at 5258 Quince Road, Memphis, Tennessee, 38117. An African-American citizen and resident of Shelby County, she is a member of numerous local civic engagement groups and is a registered voter. She lives in current

- State Senate District 30 and lives in State Senate District 33 in Tennessee's newly enacted State Senate Plan.
10. PLAINTIFF REGENNA WILLIAMS resides at 1005 Summer Springs Road, Collierville, Tennessee, 38017. An African-American citizen and resident of Shelby County, she is a registered voter. She lives in current State Senate District 33 and lives in State Senate District 32 in Tennessee's newly enacted State Senate Plan.
  11. PLAINTIFF ROSHUN AUSTIN resides at 3280 Carnes Avenue, Memphis, Tennessee, 38111. An African-American citizen and resident of Shelby County, she is a member of a number of local civic engagement groups and is a registered voter. She lives in current State Senate District 30 and lives in State Senate District 31 in Tennessee's newly enacted State Senate Plan.
  12. PLAINTIFF WILLIE MARTIN resides at 4730 Plantation Forest Cove, Collierville, Tennessee, 38017. An African-American citizen and resident of Shelby County, he is a member of a number of civic engagement groups and is a registered voter. He lives in current State Senate District 33 and lives in State Senate District 32 in Tennessee's newly enacted State Senate Plan.
  13. PLAINTIFF L. LASIMBA M. GRAY, JR., resides at 5113 Rowen Oak Road, Collierville, Tennessee, 38017. An African-American citizen and resident of Shelby County, he is a member of a number of civic engagement groups and is a registered voter. He lives in current State Senate District 33 and lives in State Senate District 32 in Tennessee's newly enacted State Senate Plan.
  14. PLAINTIFF G.A. HARDAWAY, SR., resides at 1243 Worthington Street, Memphis, Tennessee, 38144. An African-American citizen and resident of Shelby County, he is a

member of numerous civic engagement organizations and is a registered voter. He is currently the State House Representative elected from State House District 92 in the current plan. He lives in current State Senate District 29 and lives in State Senate District 30 in Tennessee's newly enacted State Senate Plan.

#### IV. DEFENDANTS

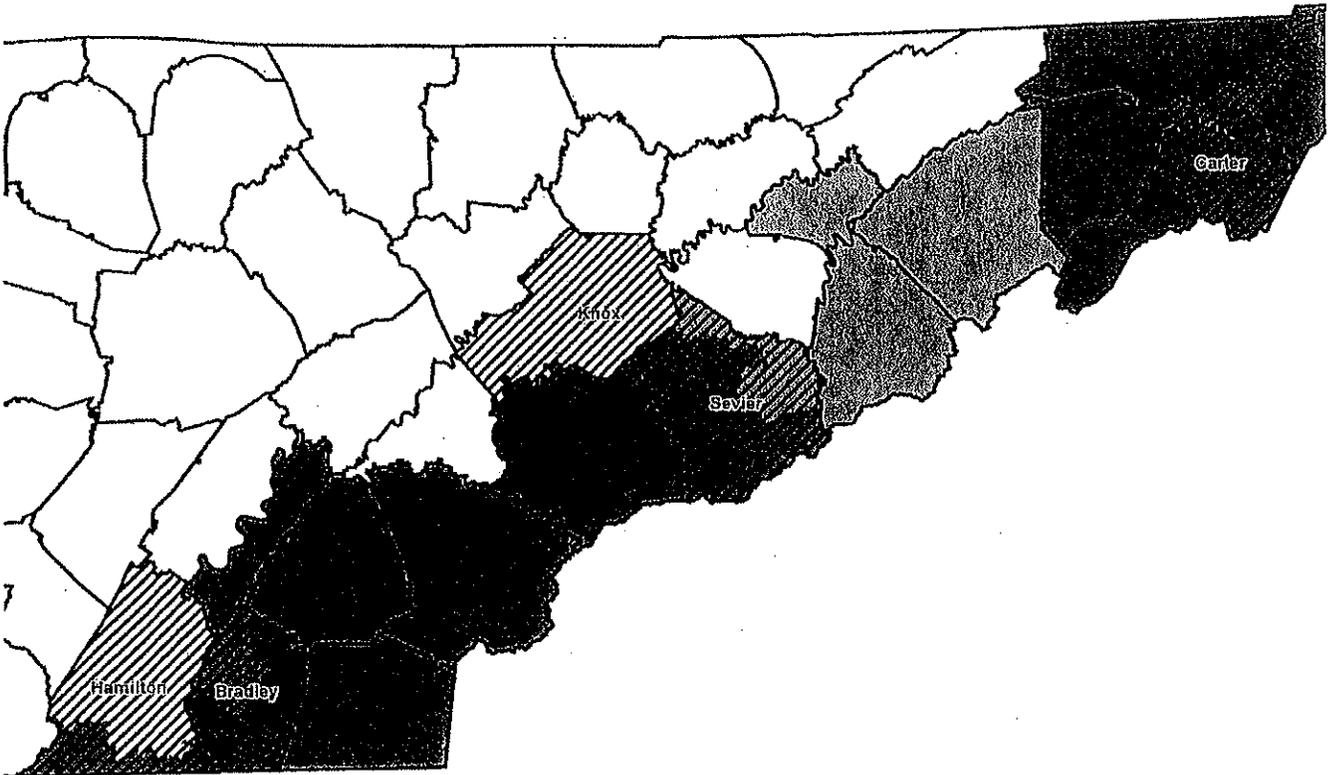
15. DEFENDANT STATE OF TENNESSEE is a political subdivision covered under the provisions of the Voting Rights Act and responsible for the actions of its officials with regard to state-wide redistricting.
16. DEFENDANT BILL HASLAM is the duly elected and acting Governor of the State of Tennessee. He is sued in his official capacity.
17. DEFENDANT TRE HARGETT is the legislatively-elected and acting Secretary of State of the State of Tennessee. He is sued in his official capacity.
18. DEFENDANT MARK GOINS is the appointed and acting Coordinator of Elections of Tennessee. He is sued in his official capacity.

#### V. FACTS

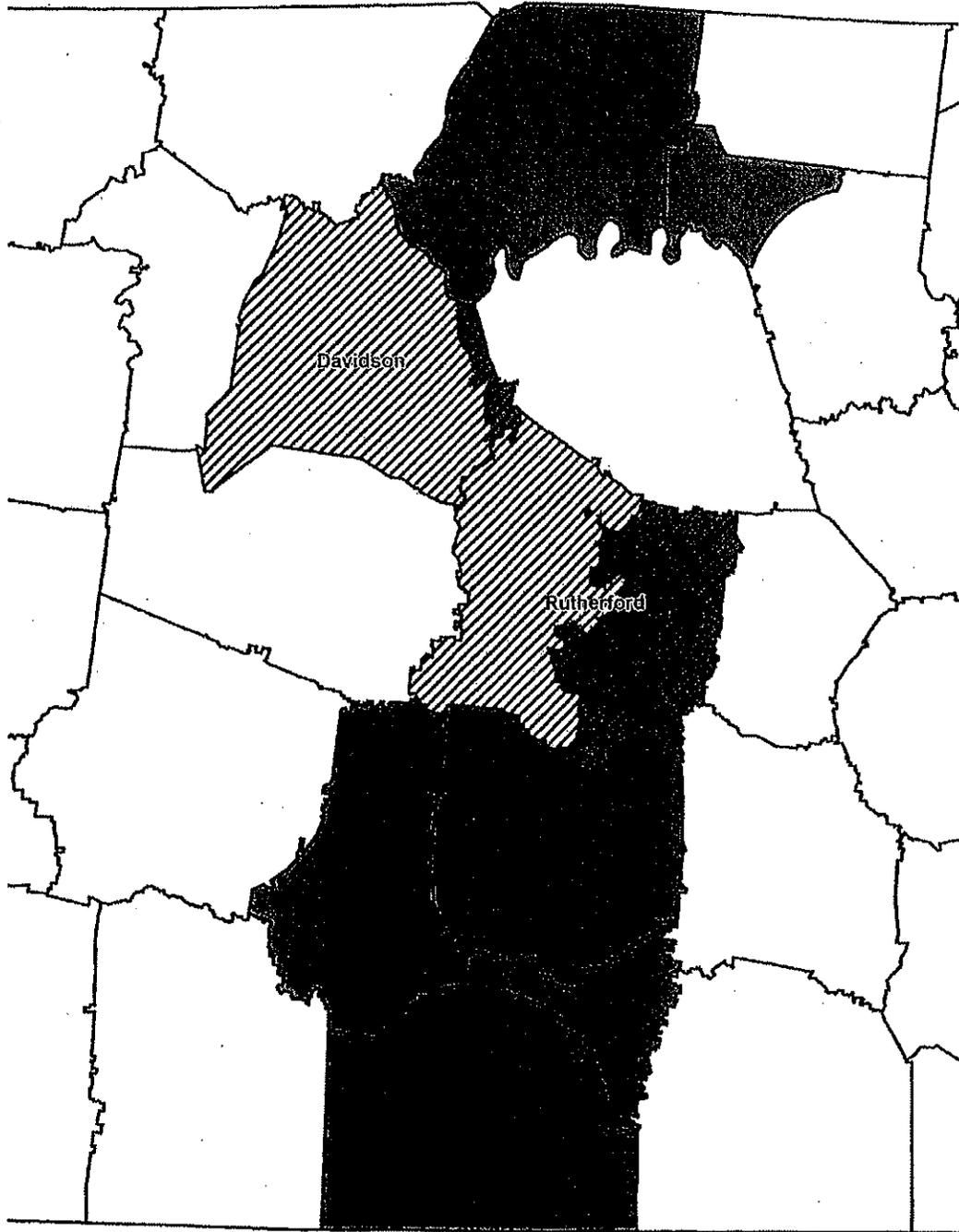
19. The overall population of Tennessee grew by 11.5% from 2000 to 2010.
20. Following the decennial census conducted in 2010, the state of Tennessee had to redraw the lines for State Senate Districts because the total variance in population between the districts was 56.46%.
21. The newly enacted Tennessee State Senate redistricting plan, Senate Bill 1514, Pub. Ch. 514, was signed into law by DEFENDANT HASLAM on February 9, 2012.
22. In Senate Bill 1514, the enacted State Senate Plan, eight counties were split, with a total variance of 9.21%.

23. In Senate Bill 1514, Shelby, Davidson, Rutherford, Hamilton, Bradley, Knox, Sevier, and Carter Counties were split.

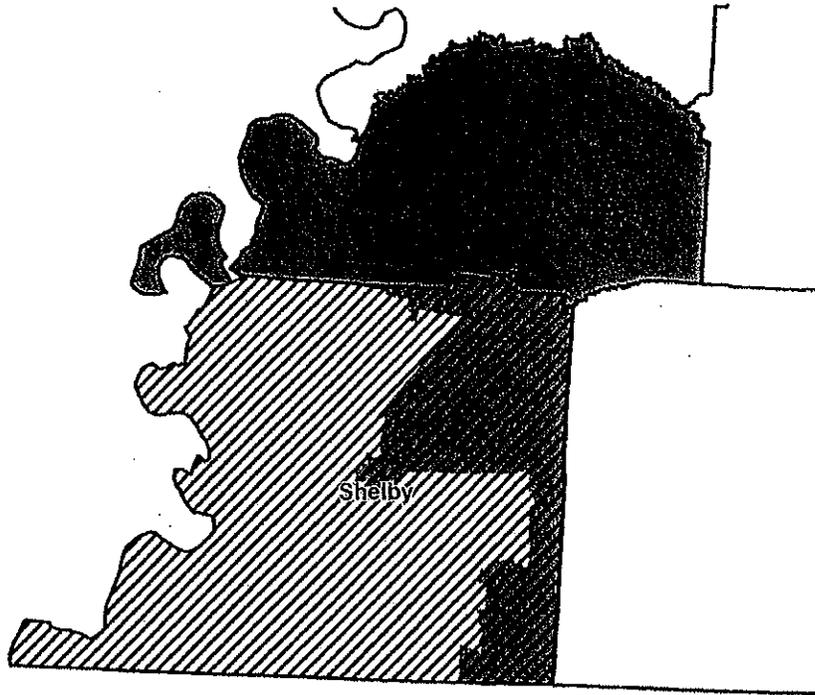
24. The Senate Bill 1514 splits in Carter, Knox, Sevier, Hamilton and Bradley Counties are demonstrated in the map below:



25. The Senate Bill 1514 splits in Davidson and Rutherford Counties are demonstrated in the map below:



26. The Senate Bill 1514 split in Shelby County is demonstrated in the map below:



27. In the redistricting plan in place prior to 2012 redistricting, there were 5 State Senate Districts apportioned to Shelby County, and 3 of those were African-American majority districts.

28. In Senate Bill 1514, the Tennessee General Assembly reduced the number of Senate Districts apportioned to Shelby County by one, from 5 to 4, with a portion of Shelby County being attached to a district centered in Tipton County.

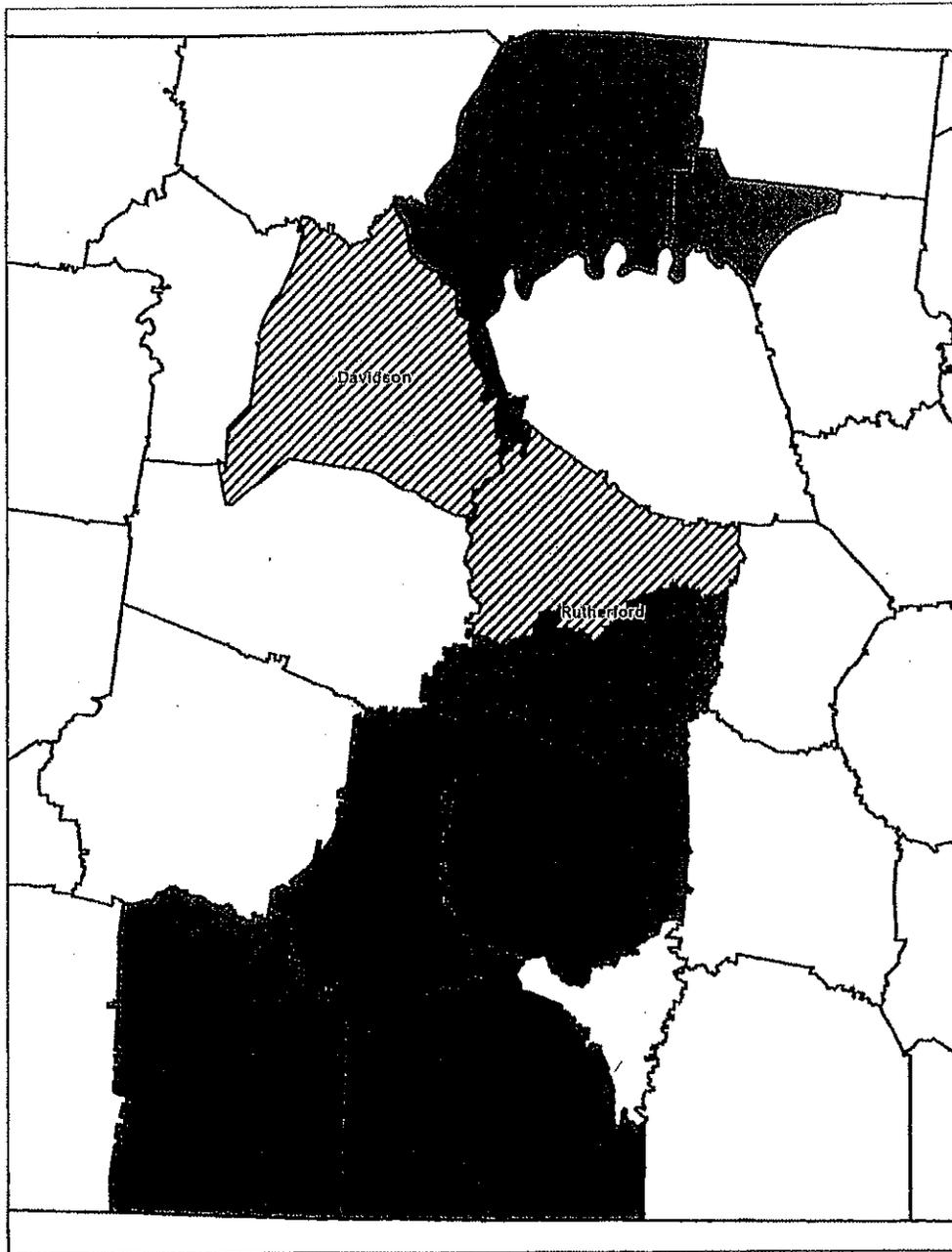
29. During the 107<sup>th</sup> Legislature's session, the House Ad Hoc Committee on Redistricting did not hold public hearings following the public release of plans in House Bill 1555 and Senate Bill 1514 and prior to voting on these plans.

30. The Tennessee Black Caucus of State Legislators (TBCSL) introduced a Senate plan that would split only 5 counties, with a total variance of 10.05%. This plan was introduced by Senator Kyle as Amendment 5 to Senate Bill 1514.

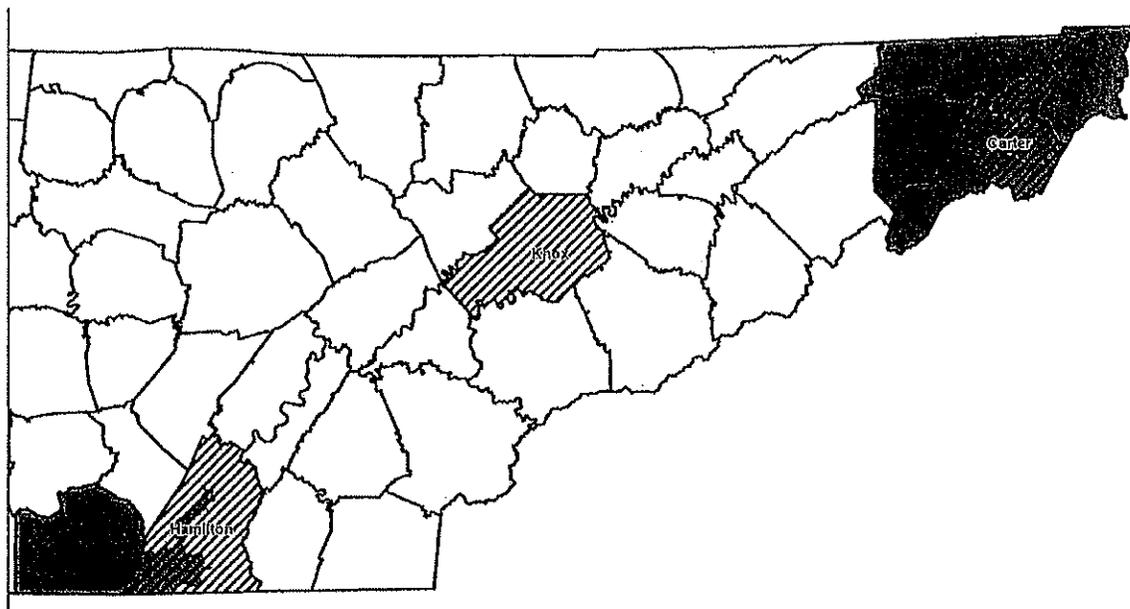
31. Amendment 5 to Senate Bill 1514 was tabled on January 13, 2012.

32. The TBCSL plan split only Carter, Knox, Davidson, Rutherford, and Hamilton Counties.

33. The TBCSL plan splits in Davidson and Rutherford Counties are demonstrated in the map below:



34. The TBCSL plan splits in Carter, Knox and Hamilton Counties are demonstrated in the map below:



35. The TBCSL plan, although more compliant with the state constitutional requirement of minimizing split counties, and also compliant with the one-person, one vote requirement of the 14<sup>th</sup> Amendment, was rejected.

36. The Tennessee Supreme Court previously held that “[t]he prohibition against crossing county lines should be complied with insofar as is possible under equal protection requirements.” *State ex rel. Lockert v. Crowell*, 631 S.W.2d 702, 709 (T.N. 1982) (*Lockert I*).

37. The Tennessee Supreme Court also recognized the “excellent policy reasons” for this constitutional provision, including that when counties are divided, “their citizens are denied the constitutional right to be represented in the State Senate as a political group by senators subject to election by all voters within that political group.” *Lockert I*, 631

S.W.2d at 709. Furthermore, “the legal and political framework of Tennessee allows and requires that the legislature enact legislation having only a local application. Thus, the legislature has the ability through local legislation to affect citizens merely because those citizens reside in a particular county. Therefore, the legislature has the right to govern citizens in one county differently from citizens in another county.” *Id.*

38. The Tennessee Supreme Court noted that they were “of the opinion that [a demonstration Senate redistricting plan] **with a total variance of 13.73% would withstand all challenges on federal constitutional grounds** in the federal courts.” *State ex rel. Lockert v. Crowell*, 656 S.W.2d 836, 841 (T.N. 1983) (*Lockert II*) (emphasis added).

## VI. CAUSE OF ACTION

### Violation of Article II, Section 6 of the Tennessee Constitution

39. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
40. The Senate Bill 1514 redistricting plan violates Article II, Section 6 of the Tennessee Constitution by splitting counties more than is necessary to comply with the one-person, one-vote mandate derived from the Equal Protection Clause or the federal Voting Rights Act of 1965.
41. The General Assembly had a plan before it that was compliant with the Tennessee State Constitution—the TBCSL plan—but it did not adopt that plan.
42. The Senate Bill 1514 redistricting plan injures Plaintiffs in that enacted State Senate Plan violates the state constitutional prohibition on minimizing split counties. As residents of a county needlessly split by the General Assembly, Plaintiffs will be afforded less influence over local legislation affecting Shelby County.

## VII. BASIS FOR EQUITABLE RELIEF

43. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and injunctive relief is their only means of securing adequate redress from all of the Defendants' unlawful practices.
44. Plaintiffs will continue to suffer irreparable injury from all of the Defendants' intentional acts, policies and practices set forth herein unless enjoined by this Court.

## VIII. PRAYER

Plaintiffs respectfully pray that this Court enter Judgment granting:

- A. A declaratory judgment that Defendants' actions violate the rights of Plaintiffs as set forth in Article II, Section 6 of the Tennessee Constitution.
- B. Preliminary and permanent injunctive relief requiring Defendants, their successors in office, agents, employees, attorneys, and those persons acting in concert with them and/or at their direction—to develop a State Senate redistricting plan that minimizes county splits, and enjoining and forbidding the use of the enacted state legislative plans.
- C. If need be, adopt an interim electoral plan for the 2012 elections for the Tennessee State Senate.
- D. An order of this Court retaining jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court.
- E. And such other and further relief as the Court may deem just and proper.

This, the 16<sup>th</sup> day of March, 2012.

Respectfully submitted,

*Van D. Turner Jr. /pva*

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Anita S. Earls (N.C. State Bar # 15597)  
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